IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 2658 OF 2007

Mohan Vithal Bagade.... .... Petitioner.

Versus

Chandrakant Janardhan Modak..... Respondent.

Mr. Prathamesh Bhaigude i/by Mr.Sugand Deshmukh for the Petitioner.
Mr. M.S.Topkar for the Respondent.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard Mr. Prathamesh Bhaigude, learned Counsel for the petitioner and Mr. M. S. Topkar, learned Counsel for the respondent.

2. Regular Civil Suit No. 495 of 1993 which was filed for seeking decree of eviction on the ground that the suit premises is in dilapidated condition and requires demolition and the plaintiff is entitled for possession of suit premises from the defendant came to be allowed by the learned 4th Joint Civil Judge, Junior Division, Dist. Satara. By the judgment and order passed by the learned trial Judge on 26th July,

1995, the suit was decreed and the defendant was directed to handover vacant and peaceful possession of the suit premises to the plaintiff within one month. Aggrieved by the said judgment and order, the defendant filed Regular Civil Appeal No. 392 of 1995 which came to be dismissed by the learned 2nd Adhoc District Judge at Satara, vide his judgment and order dated 12th September, 2006.

3. In this writ petition the judgment and order passed by the lower appellate court confirming the judgment and order passed by the learned trial Court under the Bombay Rent Act is challenged. In Writ Petition No. 4138 of 2006, I have already taken a view vide order dated 24th August, 2006 that such decree can be challenged by filing a civil revision application under Section 115 of the Code of Civil Procedure. I have further observed that when such a statutory remedy is available, a writ petition under Article 227 of the Constitution of India need not be entertained.

4. Hence, the writ petition is disposed of as such with liberty to the petitioner to file a civil revision application and if such a civil revision application is filed within a period of four weeks

from today, the period of pendency of this writ petition be taken into consideration for condonation of delay, if any.

5. Annexures to the petition memo be returned, if applied for.

6. Writ petition is disposed of, accordingly.

Sd/-

(B. H. MARLAPALLE, J.)